



Federal Communications Commission
Washington, D.C. 20554

June 4, 2019

Ms. Emma Best
MuckRock News
DEPT MR 74296
411A Highland Avenue
Somerville, MA 02144-2516

Re: FOIA Control No. 2019-000461

Dear Ms. Best:

This letter responds to your Freedom of Information Act (FOIA) request for a list of closed FCC-OIG investigations for calendar year 2018.

The enclosed spreadsheet is a printout from our Case Management System (CMS) for calendar year 2018. As indicated on the spreadsheet, the names and individuals subject to investigation have been redacted pursuant to FOIA exemptions 6 and 7(C).¹ Additionally, please be advised that a portion of records maintained by FCC OIG are protected from disclosure by a seal issued by United States District Court, District of South Dakota, Southern Division.

FOIA Exemption 6 protects "personnel and medical files and similar files the disclosure of which would constitute a clearly unwarranted invasion of personal privacy."² Balancing the public's right to disclosure against the individual's right to privacy, we have determined release of this information would constitute a clearly unwarranted invasion of personal privacy. The redacted information includes the names of individuals who were the subjects of our investigations. We have determined it is reasonably foreseeable disclosure would harm the privacy interest of the persons mentioned in these records, which Exemption 6 is intended to protect.

FOIA Exemption 7(C) protects "records or information compiled for law enforcement purposes [the production of which] could reasonably be expected to constitute an unwarranted invasion of personal privacy."³ Balancing the public's right to disclosure against the individual's right to privacy, we have determined release of this information would constitute an unwarranted invasion of personal privacy. The redacted information includes the names of individuals who were the subjects of our investigations. These names were compiled during the course of our investigations and in instances such as this, the balance favors not releasing these names. We have determined it is reasonably foreseeable disclosure would harm the Commission or the Federal government's law enforcement activities, which Exemption 7 is intended to protect.

¹ 5 U.S.C. § 552(b)(6), 7(C).

² 5 U.S.C. § 552(b)(6).

³ 5 U.S.C. § 552(b)(7)(C).

The FOIA requires that “any reasonably segregable portion of a record” must be released after appropriate application of the Act’s exemptions.⁴ However, when nonexempt information is “inextricably intertwined” with exempt information, reasonable segregation is not possible.⁵ The redactions and/or withholdings made are consistent with our responsibility to determine if any segregable portions can be released. To the extent non-exempt material is not released, it is inextricably intertwined with exempt material.

We also reviewed the responsive documents to determine if discretionary release is appropriate.⁶ The materials protected from disclosure under Exemption 6 are not appropriate for discretionary release in light of the personal privacy interests involved. The materials protected from disclosure under Exemption 7 are not appropriate for discretionary release in light of the law enforcement sensitivities involved. The portion of records maintained by FCC OIG that are protected from disclosure by a seal issued by United States District Court, District of South Dakota, Southern Division are unable to be released.

We are required by both the FOIA and the Commission’s own rules to charge requesters certain fees associated with the costs of searching for, reviewing, and duplicating the sought after information.⁷ To calculate the appropriate fee, requesters are classified as: (1) commercial use requesters; (2) educational requesters, non-commercial scientific organizations, or representatives of the news media; or (3) all other requesters.⁸

Pursuant to section 0.466(a)(5)-(7) of the Commission’s rules, you have been classified as category (2), “educational requesters, non-commercial scientific organizations, or representatives of the news media.” As an “educational requester, non-commercial scientific organization, or representative of the news media,” the Commission assesses charges to recover the cost of reproducing the records requested, excluding the cost of reproducing the first 100 pages. The production in response to your request did not involve more than 100 pages of duplication. Therefore, you will not be charged any fees.

You may seek review by filing an application for review with the Office of General Counsel. An application for review must be *received* by the Commission within 90 calendar days of the date of this letter.⁹ You may file an application for review by mailing the application to Federal Communications Commission, Office of General Counsel, 445 12th St SW, Washington, DC 20554, or you may file your application for review electronically by e-mailing it to FOIA-Appeal@fcc.gov. Please caption the envelope (or subject line, if via e-mail) and the application itself as “Review of Freedom of Information Action.”

If you would like to discuss this response before filing an application for review to attempt to resolve your dispute without going through the appeals process, you may contact the Commission’s FOIA Public Liaison for assistance at:

⁴ 5 U.S.C. § 552(b) (sentence immediately following exemptions).

⁵ *Mead Data Cent. Inc. v. Dep’t of the Air Force*, 566 F.2d 242, 260 (D.C. Cir. 1977).

⁶ See President’s Memorandum for the Heads of Executive Departments and Agencies, Freedom of Information Act, 74 Fed. Reg. 4683 (2009).

⁷ See 5 U.S.C. § 552(a)(4)(A), 47 C.F.R. § 0.470.

⁸ 47 C.F.R. § 0.470.

⁹ 47 C.F.R. §§ 0.461(j), 1.115; 47 C.F.R. § 1.7 (documents are considered filed with the Commission upon their receipt at the location designated by the Commission).

FOIA Public Liaison
Federal Communications Commission, Office of the Managing Director, Performance
Evaluation and Records Management
445 12th St SW, Washington, DC 20554
202-418-0440
FOIA-Public-Liaison@fcc.gov

If you are unable to resolve your FOIA dispute through the Commission's FOIA Public Liaison, the Office of Government Information Services (OGIS), the Federal FOIA Ombudsman's office, offers mediation services to help resolve disputes between FOIA requesters and Federal agencies. The contact information for OGIS is:

Office of Government Information Services
National Archives and Records Administration
8601 Adelphi Road-OGIS
College Park, MD 20740-6001
202-741-5770
877-684-6448
ogis@nara.gov
ogis.archives.gov

Sincerely,

A handwritten signature in black ink, appearing to read "Sharon R. Diskin". The signature is fluid and cursive, with a long horizontal line extending from the start of the name.

Sharon Diskin
Assistant Inspector General-
Investigations

Enclosure
cc: FCC FOIA Office